

I DON'T WANT TO TALK ABOUT IT. THINGS TO CONSIDER WHEN EXECUTING A LIVING WILL

Forrest Gump told us that his mama always said, "Dying is a part of life." Of course, Mama Gump's wisdom does not change the fact that most people still prefer not to talk about death and dying. Though there are many aspects to estate planning, including wills, powers-of-attorney, and trusts, individuals often overlook a very important document known as a living will or advance directive. This article will attempt to explore some what can or cannot be accomplished through a living will.

Who Should Make a Living Will?

Simple Answer: Everyone who wishes to make known their decisions about the end of their life in the event they are unable to do so. A common misconception is that only the elderly need to worry about living wills. The recent story of Terry Schiavo made it pointedly clear that all individuals, regardless of age, can be affected by end-of-life decisions. Put simply, the living will appoints an advocate, whether it be a friend, relative, spouse, or a physician, to make decisions on the way you will spend your last days or hours. That advocate will represent to all medical professionals treating you what your wishes regarding life sustaining treatment, artificially supplied hydration and nutrition, donation of your body, and other forms of medical treatment you would consent to or refuse if you are unable to do so because of a terminal illness or permanent unconsciousness.

This also leads to the question of who can legally make a living will. The Kentucky Living Will Directive Act allows any adult, which is defined as a person eighteen years of age or older with decisional capacity to make a living will. Decisional capacity is simply the ability of a mentally sound person to communicate consent or lack of consent to a medical procedure, treatment, or intervention.

When does a living will take effect?

Because a living will can authorize the withdrawing or withholding of certain life sustaining treatments, I have encountered individuals who are concerned that their life may be ended prematurely even if they have a chance for meaningful recovery. An important realization for individuals contemplating a living will is that it is only applicable in the event of a terminal illness or permanent unconsciousness which renders the grantor incapable of making or communicating their own medical decisions. The Kentucky Living Will Act defines "permanently unconscious" as a condition which, to a reasonable degree of medical probability, as determined solely by the patient's attending physician and one other physician on clinical examination, is characterized by an absence of cerebral cortical functions indicative of consciousness or behavioral interaction with the environment." [KRS 311.621\(12\)](#). Accordingly,

those individuals should not be concerned that they will simply be allowed to die if they are capable of recovering because a living will only avoids medical treatment when death is imminent and the treatment would be ineffective to avoid or delay death.

What if I change my mind?

A living will can be revoked at any time. The living will act allows a living will to be revoked by either a writing, an oral statement made in front of two adults so long as one is a healthcare provider, or by the destruction of the living will document. The only limitation is that the individual wishing to revoke the document must have decisional capacity.

Will a living will ensure that I am not hooked up to machines?

Simply executing the document will not make sure that your wishes are followed. One of the most important things about the document is that it must be available at the time it is needed. Further, it is important that your wishes be known to the person who you have appointed as your surrogate and they should be explained to the family. I have encountered situations where healthcare professionals tell me that a living will was not followed because the family gave instructions contrary to those contained in the living will. Additionally, the Living Will form in Kentucky Living Will Act directs that a living will has no effect if a woman is pregnant.

Unfortunately, as Mama Gump also said, "Life is like a box of chocolates and you never know which one you are going to get." Because we can not know how or when our time may come to pass, it is important to consider these issues, discuss them with family, and execute a document which evidences your wishes.